

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

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|----------------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 3:07-CR-05015 |
| |) | |
| MARK EDWARD ELLEFSEN |) | |
| |) | |
| Defendant. |) | |

**SUPPLEMENT TO DEFENDANT MARK ELLEFSEN'S
SENTENCING MEMORANDUM**

Defendant Mark Ellefsen supplements his previously-filed Sentencing Memorandum and other communications with the Court regarding the upcoming sentencing hearing. This supplement addresses the United States Probation Offices' PreSentence Investigation report.

Defendant objects to the offense level computed in the Presentence Investigation Report, and files the following supplemental memorandum in support of his objection to the offense level calculated in the Presentence Investigation Report. While Defendant concedes it is entirely appropriate for the government to declare a constructive dividend in a situation where funds are diverted from a normal C corporation, such is inappropriate in this case. Since the earnings in question are from the personal services of the Defendant Brian Ellefsen, it is improper to declare a constructive dividend. It is unfair and a misapplication of law to double tax these earnings. Certified Public Accountant Michael Hopfinger has provided an excellent analysis of the law as it relates to personal service corporations, earned income, assignment of income, and the absence of legal authority for the government to double tax Dr. Ellefsen's income arising from his personal services. See attachment 1, Declaration of Michael Hopfinger. In fact, the actual tax loss should be no more than \$563,505 as reflected by the Presentence Services Officer, Shawn Vendelin. Defendant submits it would be a

mistake of well-settled law to treat Defendant's earned income as dividend income.

WHEREFORE, for the above-stated reasons Defendant Mark Ellefsen respectfully requests that his objection be sustained and for such other and further relief as the Court deems just and proper.

Respectfully submitted.

/s/ Rob J. Aiken
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent E-mail notification of such filing to all CM/ECF participants in this case.

/s/ Rob J. Aiken